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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Competitive Telecommunications Association	)	
Florida Competitive Carriers Association	)	
And Southeastern Competitive Carriers Association	)	
	)	CC Docket No. 98-39
Petition On Defining Certain Incumbent LEC Affiliates	)	
As Successors, Assigns, or Comparable Carriers	)	
Under Section 251(h) of the Communications Act	)	

COMMENTS OF SPRINT CORPORATION

Sprint Corporation hereby submits its comments on the above-captioned petition filed by Competitive Telecommunications Association, Florida Competitive Carriers Association and Southeastern Competitive Carriers Association (hereafter collectively referred to as CompTel).

The CompTel petition focuses on the possibility that an ILEC could create a CLEC affiliate to operate in its ILEC territory and use the CLEC to evade its responsibilities as an ILEC under §251(c) of the Act. CompTel seeks a declaratory ruling (at 8) that an ILEC affiliate providing local service in the ILEC's territory "using resources transferred from the ILEC" (p.8) or operating "under the same or a similar brand name" (p.2) should be considered a successor or assign of the ILEC under §251(h) and thereby subject to §251(c), and should also be regulated as a dominant carrier for interstate services.

Alternatively, CompTel seeks a rulemaking proceeding to establish rules setting forth the criteria under which an ILEC's affiliate will be considered a "comparable"

carrier to the ILEC under §251(h)(2). The rules CompTel suggests in this regard (at 13) would be that the affiliated carrier would be treated as a "comparable" carrier "if it provides local service in the same geographic area as the ILEC and if the ILEC has transferred anything of value, including brand names, financial resources, or human capital" to that affiliate.

Sprint believes that the CompTel petition raises legitimate questions which should be addressed by the Commission, and Sprint agrees with CompTel that ILECs should not be allowed to create in-region CLEC affiliates for the purpose of evading their obligations under §251(c). At the same time, Sprint believes that CompTel is painting with too broad a brush in framing the relief it requests.

Sprint is especially interested in ensuring that any rulings by the Commission are broad enough to solve real problems, but not so broad as to implicate innocent conduct. Sprint has ILEC subsidiaries that operate in 19 states, largely in rural areas. In addition, Sprint's long distance subsidiary, Sprint Communications Co. L.P. (hereinafter Sprint Long Distance) is the arm of Sprint though which Sprint is offering services as a CLEC. In that regard, Sprint Long Distance has applied for and received statewide certification in a number of states in which Sprint also has ILEC operations. Sprint Long Distance has not yet commenced CLEC operations in any of its ILEC territories. However, it is quite conceivable that Sprint, or some other similar carrier, could decide to offer service in its ILEC territories through its CLEC in a purely benign fashion without raising any of the legitimate policy concerns that are evident in CompTel's petition. For example, Sprint Long Distance may be asked to provide "one stop shopping," including long distance and local service, for a large national corporation that may have one of its offices within

Sprint ILEC territory, and Sprint might choose to provide the local component of this service by simple resale of the ILEC local services throughout the nation. Nothing in such an offering could legitimately by viewed as an effort by the Sprint ILECs to evade their responsibilities under §251(c). Yet, by virtue of the fact that the "Sprint" brand name is used by both by Sprint Long Distance and the Sprint ILECs, Sprint would be obligated, under the excessively broad relief sought by CompTel, to become regulated as fully subject to §251(c),[1] and Sprint Long Distance – a carrier that is only the third largest long distance company, and one that has been treated as non-dominant for nearly two decades – would be subject to full dominant carrier regulation for its interstate services. The emphasis on the common use of the same or similar brand names is particularly ironic in this circumstance, because the Sprint brand was developed by Sprint Long Distance and only subsequently began to be employed by the Sprint ILECs.[2]

However the Commission disposes of CompTel's petition – whether through the issuance of a declaratory ruling, the initiation of a rulemaking proceeding, or whether instead the Commission determines to treat ILEC abuses on a case-by-case basis, the Commission must be very careful that its relief does not exceed the scope of the problem and does not unfairly hamper legitimate and benign operations of any carrier in the industry.

With this caution in mind, Sprint does acknowledge the possibility that, left unchecked, an ILEC could seek to evade its responsibilities under §251(c) either through

[1] Indeed, CompTel's requested ruling, as formulated on p.2, is vague enough that it could be interpreted to require all of Sprint Long Distance's CLEC operations, not just those in its ILEC territory, to be regulated as if it were an ILEC.

[2] Those carriers used to operate under the names of United, Centel, and Carolina Telephone and Telegraph.

creating a CLEC or indeed some other non-regulated enhanced services affiliate. For example, an ILEC could use the CLEC to offer new services without making those services available for resale at a wholesale discount and without making the network elements used to provide those services available as unbundled network elements, as §251(c) requires. Or, the ILEC could use the CLEC to offer rate plans for existing services (e.g., customer-specific discounts) without making those rate plans available to other CLECs at a wholesale discount as required by §251(c)(4).

In its petition, CompTel focuses on the creation by BellSouth of a CLEC that is intended to operate statewide throughout the BellSouth region, but other than discussing the potential for the use of such CLECs to contravene the requirements of the Act, CompTel does not point to any specific abusive behavior that is occurring today. This does not mean that it is merely suppositious to assume that such conduct would occur. It appears that Ameritech today is using a CLEC in one of its states, and an enhanced service provider in another of its states, to provide xDSL services that the Ameritech ILECs do not offer. In Sprint's view, it is central to sound public policy and to the development of meaningful local competition, that ILECs be required to offer not just their traditional circuit switched analog voice services, but also more advanced forms of service, such as xDSL service, to CLECs on a common carrier basis and subject to the Congressionally intended protections of §251(c). Just as Sprint opposed the efforts of several RBOCs to use §706 to evade these responsibilities,[3] the Commission ought not allow the creation of a shell CLEC affiliate to accomplish the same type of end run. To guide the Commission's consideration of how to prevent abuses by an ILEC of an

[3] See Comments of Sprint in CC Docket Nos. 98-11 et al., April 6, 1998.

affiliated CLEC (or for that matter an affiliated ESP) Sprint urges the Commission to employ the following tests.

1. Construction of New Facilities. Any construction by a CLEC of new facilities in the ILEC's region should be presumed to be an unreasonable practice and regarded as evidence of an intent to impermissibly avoid ILEC responsibilities. Either the CLEC should be treated as subject to §251(c), or such facilities should instead be provided by the ILEC. Obvious manifestations of such an intent could occur, for example, in circumstances where the CLEC serves a portion of the ILEC territory (e.g., a new housing or office development) where the CLEC deals directly with the developer and the ILEC does not build out any facilities of its own. Such intent could also be presumed if the CLEC were to build a new network (e.g., an xDSL or data network) that the ILEC chooses not to build on its own. In such cases, either with respect to this portion of the ILEC's territory or this portion of the menu of common carrier services, the CLEC can be deemed to have "substantially replaced" the ILEC and thus qualifies for treatment as an incumbent under §251(h)(2). Even if some of the CLEC facilities are located out of region (e.g., an ATM router) but are used primarily to provide local exchange service and local exchange access service within the ILEC territory, the fact that some of the facilities are located out of region should not negate the characterization of the CLEC as comparable carrier and subject to the §251(c) requirements. It is at least theoretically possible (but unlikely as a practical matter) that CLEC construction could be entirely benign – e.g., if the CLEC facilities are simply duplicative of existing ILEC facilities. However, the burden should be on the carrier to prove that any such construction is not intended to evade §251(c) responsibilities of the ILEC.

2. Service Offerings. ILECs should not be allowed to provide new common carrier services solely through an affiliated CLEC or ESP within the ILEC territory. Instead, such services must also be made available directly by the ILEC. This would include, for example, xDSL offerings which are in and of themselves clearly a common carrier service – offering increased transmission speed over a loop – and not an enhanced service. If the CLEC, rather than the ILEC, offers such local services,[4] then the CLEC should be presumed to be a comparable carrier and subject to §251(c) obligations.[5] To the extent that the ILEC affiliate offers underlying local services not offered by the ILEC (e.g., xDSL) but offers them as an unregulated ESP by bundling them with enhanced services, the ILEC, under established law, must publicly offer the underlying telecommunications service and therefore must make the facilities used in the offering available as unbundled network elements.

3. Resale Safeguards. In order to prevent ILECs from evading their wholesale/resale responsibilities under §251(c)(4) by, e.g., transferring contract customers to their CLEC affiliates, the Commission should prohibit the sale, assignment or other transfer of existing customer contracts held by an ILEC to an affiliated CLEC. ILECs should also be prohibited from waiving termination charges when a customer migrates to an affiliate. If an affiliate succeeds the ILEC as the carrier serving a customer

[4] Of course, the CLEC might offer services other than local services, such as long distance services, or might offer services outside its ILEC region that are not offered within that region, without raising any §251(c) concerns.

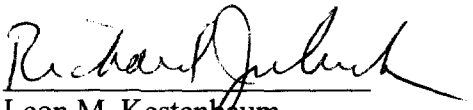
[5] There may be circumstances in which the CLEC could rebut this presumption. For example, if the CLEC offered a unique local service primarily outside its affiliated ILEC region, and the in-region offering of the service were incidental, the Commission could conclude that this service offering was not a circumvention of the ILEC's §251(c) obligations.

after the previous contract expires, the CLEC must pay for the wholesale service in a non-discriminatory manner. In such circumstances, the CLEC must pass an imputation test so that the price to the end user covers the wholesale service price of the ILEC to the CLEC.

Sprint believes that these more narrowly targeted rulings will prevent the evasion of Section 251(c) responsibilities by ILECs that CompTel is seeking to accomplish while leaving room for benign CLEC/ILEC relationships to exist without subjecting the CLEC to burdensome and unnecessary regulation. Sprint urges the Commission to follow this approach, rather than the far too broad approach advocated by CompTel.

Respectfully submitted,

SPRINT CORPORATION



Leon M. Kestenbaum
Jay C. Keithley
H. Richard Juhnke
1850 M Street, N.W., 11th Floor
Washington, D.C. 20036
(202) 857-1030

May 1, 1998

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMMENTS OF SPRINT CORPORATION** was Hand Delivered or sent by United States first-class mail, postage prepaid, on this the 1st day of May, 1998 to the below-listed parties:

Joan A. Hesler

Ms. Janice Myles
Common Carrier Bureau
Room 544
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

International Transcription Service
1919 M Street, N.W.
Washington, D.C. 20554

David L. Sieradzki
Jennifer A. Purvis
Hogan & Hartson, L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
Counsel for CompTel, the Florida Competitive Carriers Association and the Southeastern Competitive Carriers Association

Genevieve Morelli
Executive Vice President and General Counsel
Competitive Telecommunications Association
1900 M Street, N.W., Suite 800
Washington, D.C. 20036